

Title 25. Health Services.
Part 1. Texas Department of Health
Chapter 265. General Sanitation.
Subchapter K. Registration of Sanitarians.
Repeal §265.150
Amendments §§265.141-265.149, 265.151-265.158
New §265.159

Proposed Preamble

The Texas Board of Health (board) proposes amendments to §§265.141-265.149, 265.151-265.158, new §265.159, and the repeal of §265.150 concerning the registration of sanitarians.

Government Code, §2001.039 requires that each state agency conduct a review of its rules every four years and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 265.141-265.149 and 265.151-265.158 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist. Section 265.150 has been reviewed and the board has determined that the reason for adopting the section no longer exists, and the section should therefore be repealed.

A Notice of Intent to Review in regards to Government Code, §2001.039, agency review of rules was published in the March 14, 2003 issue of the Texas Register (27 TexReg 2638). No comments were received due to the publication of this notice.

The proposed amendments update references to the Act as codified in Texas Occupations Code, Chapter 1953 (the Act); update references to other codified laws; clarify existing language; and remove obsolete language. Minor amendments to wording in several sections for which no substantive change is indicated are also being proposed to allow the sections to be published in their entirety.

Amendments to §265.142 and §265.145 and the repeal of §265.150 eliminate an obsolete and unworkable requirement for preceptorship for persons not required by the Act.

Amendments to §265.143 (related to Fees) and new section §265.159 (related to Exemption from Renewal and Continuing Education for Retired Professional Sanitarians) provide a voluntary status for retired professional sanitarians.

Nance Stearman, Acting Chief, Bureau of Licensing and Compliance, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implication to state or local government as a result of enforcing or administering the sections as proposed.

Ms. Stearman has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be to assure the registration and regulation of sanitarians in Texas. There will be no effect on small businesses or micro-businesses because registration as a professional sanitarian is voluntary. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Yvonne Feinleib, Program Administrator, Texas Department of Health Sanitarian Registration Program, 1100 West 49th Street, Austin, Texas 78756, (512) 834-4517. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments, new section, and repeal are proposed under the Government Code, §2001.03, which requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act); Occupations Code, Chapter 1953; and the Health and Safety Code, §12.001, which provides the Board of Health with authority to adopt rules for the performance of every duty imposed by law on the Board of Health, the department, and the commissioner of health.

The amendments, new section, and repeal affect the Occupations Code, Title 12, Chapter 1953; and implement Government Code, §2001.039.

Section for Repeal

§265.150 Sanitarian-in-Training Preceptorship

Legend: (Proposed Amendment)

Single Underline = Proposed new language

[Bold print and brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§265.141. Purpose and Scope.

(a) Purpose. This subchapter implements the Sanitarian Registration Act, Occupations Code, Chapter 1953 **[Article 4477-3, Vernon's Texas Civil Statutes]**, which requires the Texas Department of Health to adopt rules to implement a program for the registration of sanitarians under the authority of the Texas Board of Health.

(b) (No change.)

[(c) Transition.]

[(1) Effective September 1, 1999, registered sanitarians presently licensed by the department must obtain no less than twelve continuing education contact hours related to the fields of consumer health, environmental health or sanitation within the twelve months preceding renewal of their license after final adoption of these rules and after the department establishes an anniversary date for each registered sanitarian. The requirement of two years of full-time experience, effective September 1, 1999, does not apply to sanitarians already licensed by the department unless the sanitarians allow their licenses to lapse. The educational requirement concerning 30 semester hours or its equivalent in basic or applied science, effective September 1, 2001, does not apply to sanitarians already licensed by the department unless the sanitarians allow their licenses to lapse.]

[(2) The requirement of two years of full-time experience, effective September 1, 1999, does not apply to sanitarians-in-training already licensed by the department unless the sanitarians-in-training allow their license to lapse. The continuing education contact hours requirement, effective September 1, 1999, does not apply to sanitarians-in-training already licensed with the department. The continuing education contact hours requirement will apply only after the sanitarians-in-training upgrade to sanitarian status. For all sanitarians, the hours must be accrued in the twelve months preceding renewal of their sanitarian license based on their anniversary date. The educational requirement concerning 30 semester hours or its equivalent in basic or applied science, effective September 1, 2001, does not apply to sanitarians-in-training already licensed with the department unless the sanitarians-in-training allow their license to lapse.]

[(3) Effective September 1, 1999, applicants for registration as a sanitarian must have graduated from an accredited college or university with no less that fifteen semester hours or its equivalent in basic or natural science; have not less than two years of full-experience in consumer health, environmental health or sanitation; have completed all required department

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application forms; have paid all required fees; and have successfully completed an examination prescribed by the department. An applicant with less than two years of full-time experience will be registered as a sanitarian-in-training and be issued a license remaining in effect for a period not to exceed two years after date of issue.]

[(4) Effective September 1, 2001, the educational requirements for registration as a sanitarian will require graduation with a bachelor's degree from an accredited college or university with not less than thirty semester hours or its equivalent in a basic or applied science.]

§265.142. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings.

(1) Act - Occupations Code, Chapter 1953 [Article 4477-3, Vernon's Civil Statutes], concerning the registration of sanitarians.

(2) - (10) (No change.)

(11) Education - The **[Until September 1, 2001, bachelor's degree from an accredited college or university that includes not less than fifteen semester hours or its equivalent in basic or natural science or any combination of basic or natural science. Effective September 1, 2001, the]** educational requirements for registration as a sanitarian **[will]** require a bachelor's degree from an accredited college or university with not less than thirty semester hours or its equivalent in basic or applied science.

(12) - (16) (No change.)

[(17) Preceptor - A teacher or tutor.]

[(18) Preceptorship - An arrangement where a novice is taught or tutored by an experienced person.]

17 **[(19)]** Registered sanitarian - A department registered **[licensed]** public health professional qualified by specific education, specialized training and field experience to protect the health, safety and general welfare of the public from adverse environmental determinants.

18 **[(20)]** Registrant - A person registered **[licensed]** under the Act.

19 **[(21)]** Registration - The procedure by which the department accepts, processes, and approves applications for registration of sanitarians including the furnishing, replacement or duplication of certificates.

20 **[(22)]** Sanitarian-in-Training - A person registered in accordance §265.145(c) of this section [meeting all the requirements for registration as a sanitarian except for the required experience].

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21 **[(23)]** Scope of professional practice - Includes, but not limited to, evaluating, planning, designing, managing, organizing, enforcing, or implementing programs, facilities, or services that protect public health and the environment. The scope of practice also includes educating, communicating, and warning communities of factors that may adversely affect the general health and welfare. The scope of practice may be in the areas of food quality and safety, on-site wastewater treatment and disposal, solid and hazardous waste management, ambient and indoor air quality, drinking and bathing water quality, insect and animal vector control, recreational and institutional facility inspections, consumer health and occupational health and safety.

§265.143. Fees.

(a) (No change.)

b) The schedule of fees is as follows:

(1) (No change.)

(2) initial registration **[license]** fee:

(A) - (B) (No change.)

(3) annual registration **[annual license]** renewal fee:

(A) - (B) (No change.)

(4) - (5) (No change.)

(6) certificate of registration **[license]** (framing size) or identification card (billfold size) replacement fee - \$20;

(7) - (8) (No change.)

(9) continuing education sponsor approval fee - \$100 per sponsor. Pre-approved providers **[Government agencies and accredited institutions of higher education]** are exempt from this fee; or **[.]**

(10) exemption fee for retired sanitarians - \$150.

(c) The month the initial registration **[license]** is issued will establish the anniversary date for future annual registration **[license]** renewal.

[(d) Registered sanitarians failing to renew their licenses after final adoption of these rules must pay the reinstatement fee. The month the renewal license is issued will establish the anniversary date

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for future renewal license.]

§265.144. Application Procedures.

(a) (No change.)

(b) General.

(1) (No change.)

(2) The department must receive all required application materials at least 30 **[45]** days prior to the date the applicant wishes to take the examination, including the application fee.

(3) (No change.)

[(4) An application is not considered complete until the required prescribed examination has been taken by the applicant.]

(c) General application materials. The application packet must contain the following items to be complete:

(1) - (2) (No change.)

(3) the educational qualifications of the applicant (graduation with a bachelor's degree from an accredited college or university that included not less than **[fifteen semester hours or its equivalent in basic or natural science or any combination of basic or natural science. Effective September 1, 2001, the educational requirements for registration as a sanitarian will require graduation with a bachelor's degree from an accredited college or university with not less than]** thirty semester hours or its equivalent in a basic or applied science);

(4) qualifying experience **[(not less than two years of full-time experience in the fields of consumer health, environmental health or sanitation including training in the basic sciences and/or public health to the extent deemed necessary by the Board in order to effectively serve as a registered sanitarian)];**

(5) a statement that the applicant has read Occupations Code, Chapter 1953 **[Texas Civil Statutes, Article 4477-3]** (Act) and these rules and agrees to abide by them;

(6) a statement that the applicant shall return to the department any registration **[license]** upon the expiration and nonrenewal, revocation, or suspension of the registration **[license]**;

(7) - (8) (No change.)

(9) a statement that the information in the application is truthful and that the applicant

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understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application, or denial or the revocation of any registration **[license]** issued; and

(10) (No change.)

(d) Documents. The following documents shall be submitted:

(1) (No change.)

(2) an official transcript from an accredited college or university (sealed as a true and exact copy of an unaltered original) showing graduation with a bachelor's degree from an accredited college or university that included not less than **[fifteen semester hours or its equivalent in basic or natural science or any combination of basic or natural science. Effective September 1, 2001, the educational requirements for registration as a sanitarian will require graduation with a bachelor's degree from an accredited college or university with not less than]** thirty semester hours or its equivalent in a basic or applied science. **[; and**

(3) proof of the successful completion of the prescribed examination if administered by the department's designee.]

§265.145. Qualifications for Registration as a Sanitarian or Sanitarian-in-Training.

(a) The purpose of this section is to set out the qualifications of applicants for examination^[,] and registration^[, and licensing] as a sanitarian or sanitarian-in-training.

(b) An applicant for registration as a Professional Sanitarian who qualifies under Occupations Code, §1953.102(a) **[Texas Civil Statutes, Article 4477-3, §5(a) (Act)]**, must have:

(1) graduated with a bachelor's degree from an accredited college or university that included not less than **[fifteen semester hours or its equivalent in basic or natural science or any combination of basic or natural science. Effective September 1, 2001, the educational requirements for registration as a sanitarian will require graduation with a bachelor's degree from an accredited college or university with not less than]** thirty semester hours or its equivalent in a basic or applied science;

(2) not less than two years of full-time experience in the fields of consumer health, environmental health or sanitation which may include the following:

(A) (No change.)

(B) site evaluation and design of on-site sewage system facilities as specified in Texas Commission on Environmental Quality **[Texas Natural Resource Conservation Commission]** rules;

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(C) - (G) (No change.)

(3) (No change.)

[(4) not less than two years of experience gained under the preceptorship of a department registered sanitarian or a person possessing equal qualifications, as determined by the department. This preceptor is required to verify and affirm the experience of the applicant;]

(4) **[(5)]** passed the prescribed examination as set forth in §265.148 of this title (relating to Examinations);

(5) **[(6)]** filed the documents and application required by §265.144 of this title (relating to Application Procedures); and

(6) **[(7)]** paid the appropriate fees.

(c) An applicant for registration as a Sanitarian in Training who qualifies under Occupations Code, §1953.102(b) **[Texas Civil Statutes, Article 4477-3, §5(b) (Act)]**, must have:

(1) graduated with a bachelor's degree from an accredited college or university that included not less than **[fifteen semester hours or its equivalent in basic or natural science or any combination of basic or natural science. Effective September 1, 2001, the educational requirements for registration as a sanitarian will require graduation with a bachelor's degree from an accredited college or university with not less than]** thirty semester hours or its equivalent in a basic or applied science;

(2) (No change.)

[(3) completed a preceptor contract on department forms that includes:]

[(A) the name and signature of each preceptor and the name and signature of the sanitarian-in-training;]

[(B) the registration number of each preceptor;]

[(C) the primary location and address where consumer health, environmental health or sanitation services are provided;]

[(D) a description of consumer health, environmental health or sanitation duties to be rendered by the sanitarian-in-training;]

[(E) a statement that each preceptor and the sanitarian-in-training have read and agree to adhere to the Act and this subchapter; and]

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[(F) the date the preceptor and sanitarian-in-training signed the department's preceptor contract;]

(3) **[(4)]** filed the documents and application required by §265.144 of this title; and

(4) **[(5)]** paid the appropriate fees.

(d) On proper application, the department may grant a certificate **[license]** of registration to a licensee or registrant of another state, commonwealth, or territory of the United States that has requirements equivalent to or higher than those in effect in this state for the registration of a sanitarian or sanitarian-in-training.

§265.146. Educational Requirements.

(a) (No change.)

(b) Core educational requirements for initial registration include the following.

(1) Acceptable courses are air pollution; anatomy; animal science; bacteriology; biochemistry; biology; biomedical science; biophysics (no more than six semester hours or its equivalent); biostatistics; botany; cell physiology; chemical engineering; chemistry; community health; computer science (no more than six semester hours or its equivalent); dairy science; ecology; embryology (no more than six semester hours or its equivalent); entomology; environmental health; environmental science; environmental diseases; environmental law; epidemiology; food bacteriology; food science; food technology; genetics; geophysics; geology; hazardous waste; histology; **[histology]**; hydrogeology; hydrology; industrial hygiene; infectious diseases; limnology; mathematics (beyond algebra - no more than six semester hours or its equivalent); courses taken in an accredited allopathic or osteopathic school of medicine (no more than six semester hours or its equivalent); meteorology (no more than six semester hours or its equivalent); microbiology; molecular biology; occupational health; occupational safety; parasitology; pathology; physics (no more than six semester hours or its equivalent); physiology; plant taxonomy; **[toxonomy;]** public health; public health education (no more than six semester hours or its equivalent); public health law; radiological health; sanitary engineering; **[sewage sanitation]** soil science; statistics (no more than six semester hours or its equivalent); toxicology; vector control; veterinary medical courses (no more than six semester hours or its equivalent) ; veterinary public health; virology; wastewater treatment; water quality; and zoology.

(2) (No change.)

(3) Courses not listed may be submitted for consideration for acceptance by the department **[or the Sanitarian/Code Enforcement Officers' Advisory Committee]**.

§265.147. Continuing Education Requirements.

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(a) (No change.)

(b) Each registered sanitarian must obtain and show proof of not less than twelve continuing education contact hours related to the fields of consumer health, environmental health or sanitation as defined in §256.142 of this title (relating to Definitions) within the twelve months preceding renewal of their registration **[license]**.

(c) - (l) (No change.)

[(m) Documentation of continuing education activity shall be on a roster form that includes the name, address, phone number, registered sanitarian license number, social security number (used to coordinate continuing education activity information with the department's records), and signature of the department registered sanitarian.]

(m) **[(n)]** Sponsors of approved continuing education activities shall:

(1) at the conclusion of the activity distribute to those registered sanitarians who have successfully completed the activity a certificate of completion which shall include the name of the sponsor, the date and name of the activity, and the continuing education units earned;

(2) maintain a copy of the register **[roster]** for two years and provide it to the department upon request.

(n) **[(o)]** Each registered sanitarian shall collect and keep certificates of completion from all courses completed. These certificates of completion will be used to document a registered sanitarian's attendance at approved courses. Transcripts showing coursework in environmental or consumer health from an accredited college or university, or written verification of hours approved by the National Environmental Health Association (NEHA) will also be accepted. The department will conduct random audits for compliance with this requirement.

(o) **[(p)]** The department may deny, revoke, or refuse to renew approval if the sponsor fails to maintain or provide records related to the provision of continuing education to the department, or fails to comply with any other requirements that are a basis for approval or that are a part of this subchapter.

(p) **[(q)]** A registered sanitarian or sponsor may file a written request for an extension of time for compliance with any deadline in this subsection. Such request for extension, not to exceed 90 days, shall be granted by the department if the registered sanitarian or sponsor files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause includes, but is not limited to, extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.

(q) **[(r)]** Transition. Course sponsors who submitted one or more activities to the department and received approval between September 1, 2000, and September 1, 2002, will be approved for one year without payment of a fee upon completion and submission of the sponsor approval form within 90 days of

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the effective date of these rules.

§265.148. Examinations.

(a) - (b) (No change.)

(c) Application for examination.

(1) (No change.)

(2) An applicant meeting the requirements of §265.145 of this title (relating to Qualifications for Registration as a Sanitarian or Sanitarian-in-Training) shall be approved to take the exam. The department will notify the applicant of his or her eligibility for examination. Applications that are incomplete or late may cause the applicant to miss the examination deadline. The notice shall include instructions for scheduling to take the examination **[registration form]**. The notice of eligibility for examination must be presented at the examination station prior to taking the examination.

(3) The notice of eligibility to take the examination **[registration form]** must be submitted **[completed and returned]** to the department or the department's designee by the applicant with the required examination fee on or before the deadline set by the department.

(d) - (f) (No change.)

(g) Failures.

(1) (No change.)

[(2) If requested in writing by a person who fails the examination administered under the Act, the department shall allow the person to review the examination under the supervision of a department appointed proctor. The written request must be submitted within 21 days from the date of the notification of failure. All reviews are subject to the department's security requirements. Textbooks and other references may not be used and persons other than the applicant and department personnel may not be present during the review. The department shall set a date and hour within a reasonable time when the examination may be reviewed. The appointment shall be scheduled during regular business hours and in the office of the Sanitarian Registration Program. The department will respond to the request within 30 working days.]

(2) **[(3)]** A person who fails the examination may retest after ninety days and after paying another examination fee. All retests must be completed not later than one year after the initial date of examination eligibility or the person's application will be voided.

(h) - (i) (No change.)

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§265.149. Application Approval or Disapproval.

(a)-(b) (No change.).

(c) An application for registration shall be disapproved if the person has:

(1) - (3) (No change.)

(4) violated any provisions of the Occupations Code, Chapter 1953 **[Texas Civil Statutes, Article 4477-3 (Act)]** or this subchapter;

(5) (No change.)

(6) had a certificate or license to engage in a profession in this state or elsewhere revoked for unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of the profession; or

(7) satisfactory proof is presented to the board establishing that the person has been found guilty of unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of a profession.

[(6) had a certification or registration to engage in sanitation or a related profession revoked by another licensing entity in this state or another state, commonwealth, or territory of the United States for any of the following reasons:]

[(A) unprofessional conduct;]

[(B) fraud, deceit, or negligence; or]

[(C) misconduct in the practice of sanitation or a related profession.]

(d) If after review, the department determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the decision and provide notice and an opportunity for a **[fair]** hearing in accordance with the provisions of the Administrative Procedure Act (APA), Government Code, Chapter 2001, applicable state and federal statutes, the Rules of Practice and Procedures of the State Office of Administrative Hearings (SOAH) and this chapter **[under 25 TAC §1.51 et seq]**.

§265.151. Sanitarian Registration Procedures.

(a) (No change.)

(b) Issuance of certificates of registration **[licenses]**.

(1) The department will send each applicant whose application has been approved and

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who has passed the examination a sanitarian registration **[license]** and an identification card containing the registration **[license]** number.

(2) A certificate of registration **[license]** issued under this Act is valid for one year and may be renewed annually on payment of the required renewal fee and documentation of the required continuing education contact hours **[units]**.

(3) Any registration **[license]** or identification card remains the property of the department and must be surrendered on demand by the department.

(c) Replacement registration **[license]**. The department will replace a lost, damaged, or destroyed registration **[license]** or identification card upon written request from a registrant and payment of the registration **[license]** or identification card replacement fee. The request shall include a statement describing the loss or destruction of the original registration **[license]** or identification card or be accompanied by the damaged registration **[license]** or card.

(d) Name change. Before another registration **[license]** or identification card will be issued by the department due to a name change, the registrant must document the name change with a duly executed affidavit provided by the department and a notarized copy of a marriage license, court decree evidencing such change, or a copy of a Social Security card reflecting the new name. The registrant shall return any previously issued registration **[license]** or identification card and remit the registration **[license]** or identification card replacement fee as set out in §265.143 of this title (relating to Fees).

§265.152. Sanitarian Registration **[License] Renewal.**

(a) Purpose. The purpose of this section is to set forth the rules governing registration **[license]** renewal for sanitarians.

(b) General.

(1) A registrant must renew the registration **[license]** annually.

(2) Each registrant is responsible for renewing the registration **[license]** before the expiration date and shall not be excused from paying the renewal fee. Failure to receive notification from the department prior to the expiration date of the registration **[license]** will not excuse the sanitarian from renewing.

(3) The department will not renew the registration **[license]** of a registrant who is in violation of the Act or this subchapter at the time of application for renewal.

(4) (No change.)

(5) The department shall deny renewal of the registration **[license]** of the registrant if renewal is prohibited by the Education Code, §57.491.

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(c) Registration **[License]** renewal.

(1) At least 45 days prior to the expiration date of a person's registration **[license]**, the department will send notice to the registrant at the address in the department's records of the expiration date of the registration **[license]**, the amount of the renewal fee due, and a renewal form which the registrant must complete and return to the department with the required renewal fee.

(2) The renewal form shall require the provision of the preferred mailing address, primary employment address and telephone number, **[category of employment]**, and a statement of all misdemeanor and felony offenses for which the registrant has been convicted.

(3) (No change.)

(4) The department shall issue a registrant who has met all requirements for renewal a registration **[license]** and identification card.

(d) Late Renewal Reinstatement.

(1) The department shall inform a person who has not renewed a registration within 30 working days following the expiration of the registration **[license]** of the amount of the renewal fee and reinstatement fee required for renewal and the date the registration **[license]** expired.

(2) A registered sanitarian whose registration **[license]** has expired for not more than one year may renew the registration **[license]** by submitting to the department the registration **[license]** renewal form, the renewal fee, proof of completion of continuing education units, and the reinstatement fee. The renewal must be mailed to the department not more than one year after the expiration date of registration. The postmark date shall be considered as the date the renewal was filed.

(3) A person whose registration **[license]** has been expired for more than one year may not renew. The person may apply for a new registration **[license]** by meeting the then current requirements and procedures for registration as a sanitarian.

(e) Registration **[License]** Expiration.

(1) A registered sanitarian whose registration **[license]** has expired may not claim to be a sanitarian or sanitarian-in-training or use the titles "sanitarian" or "sanitarian-in-training".

(2) A registered sanitarian who fails to renew a registration **[license]** is required to surrender the certificate of registration **[license]** to the department not later than after 90 days from expiration of the registration **[license]** or prior to that date at the request of the department.

(f) Military duty. If a registrant fails to timely renew a registration because the registrant is or was on active duty with the uniformed services of the United States of America serving outside the State

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of Texas, the registrant may renew the registration **[license]** in accordance with this subsection.

(1) Renewal of the registration **[license]** may be requested by the registrant, the registrant's spouse, or an individual having power of attorney from the registrant. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after the expiration of the registration **[license]**.

(3) - (5) (No change.)

(6) A registrant renewing under this subsection shall not be required to complete continuing education for the period of the active duty service.

§265.153. Grounds for Suspension or Revocation.

A registration or license may be suspended or revoked if the certificate holder: **[for the following reasons:]**

(1) practiced fraud or deceit in obtaining the certificate; or

(2) acted in a manner constituting gross negligence, incompetency, or misconduct in the practice of sanitation.

[(1) fraud or deceit in obtaining registration or a license including:]

[(A) presenting false information to the department on any initial application or document; or]

[(B) presenting false information to the department on any renewal document;]

[(2) gross negligence:]

[(A) as determined by the final judgment of a civil or criminal lawsuit; or]

[(B) as defined by case law;]

[(3) incompetency including:]

[(A) a determination of mental incompetency by a court;]

[(B) commitment, emergency detention, or admission to a mental health facility under the Texas Mental Health Code; or]

[(C) any mental or physical condition which does not allow performance with

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reasonable skill or safety; or]

[(4) misconduct in the practice of professional sanitation including:]

[(A) presenting false information to the department in any investigation or disciplinary proceeding of the department;]

[(B) making deceptive, false, or misleading statements concerning:]

[(i) qualifications or credentials;]

[(ii) advertising for the registrant's services; or]

[(iii) the registrant's practice;]

[(C) failing to comply with an order issued by the department;]

[(D) consuming alcohol or taking controlled substances not prescribed by a licensed physician while on active duty as a sanitarian;]

[(E) aiding or abetting the practice of an unlicensed person when that person is required to be registered under the Texas Civil Statutes, Article 4477-3;]

[(F) verbally, physically, or sexually abusing or attempting to abuse an individual while on active duty as a sanitarian;]

[(G) falsifying reports made as a sanitarian;]

[(H) accepting or offering to accept any form of compensation for:]

[(i) not reporting a hazard as required; or]

[(ii) allowing a person not to correct a hazard found by the sanitarian while on duty; or]

[(I) while on duty as a sanitarian failing to report a crime when the report is required by law.]

§265.154. Registration of Persons with Criminal Backgrounds.

(a) (No change.)

(b) Criminal convictions which directly relate to the occupation of sanitarian shall be considered by the department as follows.

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(1) The department may suspend or revoke an existing registration, disqualify a person from receiving a registration [license], or deny a person the opportunity to be examined for a registration [license] because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities under that registration in accordance with Occupations Code, §53.022 [Texas Civil Statutes, Article 6252-13c, § 4].

(2) In considering whether a criminal conviction directly relates, the department shall consider:

(A) (No change.);

(B) the relationship of the crime to the purposes for requiring a registration [license] as a sanitarian;

(C) the extent to which a registration [license] might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a sanitarian or sanitarian-in-training. In determining the present fitness of a person, the department shall consider the evidence described in Occupations Code, §53.023 [Texas Civil Statutes, Article 6252-13c, §4(c)].

(c) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to perform or to be unfit for registration [license]:

(1) the misdemeanor of violating the Occupations Code, Chapter 1953 [Texas Civil Statutes, Article 4477-3];

(2) - (8) (No change.)

(d) Procedures for revoking, suspending, or denying a license to persons with criminal backgrounds shall be as follows.

(1) (No change.)

(2) In accordance with Occupations Code §53.051 the administrator shall notify the person in writing of: **[Texas Civil Statutes, Article 6252-13d, if the department denies, suspends, or revokes an application or registration under this section, the administrator shall give the person written notice:]**

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(A) the reason for the suspension, revocation, denial, or disqualification;

(B) the review procedure provided by Section 53.052; and

(C) the earliest date the person may appeal the action of the licensing authority.

[(A) of the reasons for the decision;]

[(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, for review of the evidence presented to the department and its decision;]

[(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable; and]

[(D) of the earliest date that the person may appeal.]

§265.155. Violations, Complaints, Investigations, and Disciplinary Actions.

(a) Purpose. The purpose of this section is to set out:

(1) violations and prohibited actions under the Occupations Code, Chapter 1953 **[Texas Civil Statutes, Article 4477-3]**, and this chapter;

(2) - (3) (No change.)

(b) - (c) (No change.)

(d) Investigation of complaints.

(1) - (4) (no change.)

(5) If the administrator determines that there are sufficient grounds to support the complaint, the administrator may propose to deny, suspend, revoke, or not renew a registration **[license]**.

(e) Disciplinary actions.

(1) The department may deny an application or registration **[license]** renewal or suspend or revoke a registration **[license]**.

(2) Prior to institution of formal proceedings to revoke or suspend a registration **[license]**, the department shall give written notice to the registrant of the facts or conduct alleged to warrant revocation or suspension, and the registrant shall be given an opportunity, as described in the notice, to

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show compliance with all requirements of the Act and this chapter, including the opportunity to request an informal conference.

(3) If denial, revocation, or suspension of a registration **[license]** is proposed, the department shall give written notice to the applicant or registrant that the applicant or registrant must request, in writing, a **[fair]** hearing within 20 days of receipt of the notice. The notice shall state the basis for the proposed action. Receipt of the notice is presumed to occur on the 5th day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

(4) (No change.)

(5) If the applicant or registrant fails to appear or be represented at the scheduled hearing or informal conference, the person is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing.

(6) (No change.)

(7) The **[fair]** hearing shall be conducted according to the hearing procedures in §265.154 of this title (relating to Registration of Persons with Criminal Backgrounds), if applicable and in accordance with the provisions of the Administrative Procedure Act (APA), Government Code, Chapter 2001, applicable state and federal statutes, the Rules of Practice and Procedures of the State Office of Administrative Hearings (SOAH) and this chapter **[the department's fair hearing procedures in 25 TAC §1.51 et seq]**.

(f) Denial, suspension, or revocation.

[(1) The department shall suspend or revoke a license issued under this Act if the department determines that the license holder engaged in fraud or deceit in obtaining a license or is grossly negligent, incompetent, or has engaged in misconduct in professional practice.]

(1) **[(2)]** If the department suspends or revokes a registration **[license]**, the suspension or revocation shall remain in effect until the administrator or the department determines that the reason for suspension or revocation no longer exists unless an order specifies a time period. The administrator or the department shall investigate prior to making a determination.

(2) **[(3)]** During the time of suspension, the suspended registration **[license]** holder shall return his or her certificate of registration **[license]** and identification card to the department.

(3) **[(4)]** If the suspension overlaps a registration **[license]** renewal date, the suspended registration **[license]** holder may comply with the renewal procedures in this chapter; however, the department may not renew the registration **[license]** until the administrator determines that the reason for suspension no longer exists or the period of suspension is completed.

(4) **[(5)]** If the department suspends or revokes a registration **[license]**, a person may not

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reapply for a period of one year after suspension or three years after revocation. The department may refuse to issue a registration **[license]** if the reason for suspension or revocation continues to exist.

(5) **[(6)]** Upon revocation, a registration **[license]** holder shall return the certificate of registration **[license]** and identification card to the department.

§265.156. Processing Applications.

(a) Time periods. The department shall comply with the following procedures in processing applications for initial registration and registration renewal.

(1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of application for **[license of]** registration or sanitarian- in-training registration **[license]** - 30 working days;

(B) - (C) (No change.)

(2) (No change.)

(b) - (d) (no change.)

§265.157. Exemptions.

(a) In accordance with Occupations Code, §§1953.002 - 1953.003, those **[Those]** persons such as physicians, dentists, engineers, and doctors of veterinary medicine, who are duly licensed by another official state licensing agency, who by nature of their employment or duties might be construed to come under the provisions of this Act, shall be exempt from the provision of this Act.

(b) (No change.)

§265.158 Advertising.

(a) A registrant shall not use advertising that is false, misleading, or deceptive or advertising that is not readily subject to verification.

(b) - (c) (No change.)

§265.159 Exemption from Renewal and Continuing Education for Retired Professional Sanitarians.

(a) An individual who has been continuously registered for at least five years as a professional

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sanitarian in Texas may use the titles "Retired Professional Sanitarian" and "R.S. (retired)" in accordance with the following conditions:

(1) the individual must have applied to the department and been approved for the exemption in accordance with subsection (c) of this section;

(2) the individual may not be employed in the field of environmental health, consumer health, or sanitation; and

(3) the individual may not represent him or herself to be currently registered as a sanitarian in Texas by the Texas Department of Health.

(b) Once an individual is approved for the exemption under this subsection, he or she must submit a new application for registration which meets the then current requirements for registration, including passing the examination, and receive a new, current registration card, prior to using the title "Professional Sanitarian" or "RS" again.

(c) An individual who wishes to request an exemption under this subsection must

(1) submit a request form specified by the department;

(2) submit the required fee; and

(3) hold a current registration on the date the request is postmarked.

(d) No renewal form, renewal fee or continuing education is required for individuals approved under this subsection.

(e) Transition. An individual who meets the following requirements is automatically approved under this subsection and may use the titles "Retired Professional Sanitarian" and "R.S. (retired)" without submission of a form or a fee to the department:

(1) meets the requirements of both subsection (a)(2) and (a)(3) of this section;

(2) was continuously registered for at least five years as a professional sanitarian in Texas prior to September 1, 2000; and

(3) his or her registration lapsed prior to the effective date of these rules.